UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/51/531
21 October 1996
ENGLISH
ORIGINAL: ENGLISH/SPANISH

Fifty-first session
Agenda item 27

NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 19 October 1996 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to attach the document entitled "Juridical analysis of the scope and illegality of the Helms-Burton Act". Because of its relevance, I should like to request that it be circulated as a document of the General Assembly under agenda item 27.

(Signed) Bruno RODRÍGUEZ PARRILLA
Ambassador
Permanent Representative

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/...

ANNEX

Juridical analysis of the scope and illegality of the Helms-Burton Act

The viewpoint of an outstanding American law firm

The United States of America's Cuban Liberty and Solidarity (LIBERTAD) Act of 1996 a/ already stands condemned by virtually the entire international community. Through regional organizations and individually, the States Members of the United Nations have recognized this unprecedented legislation for what it is: an arrogant and open attack on their own sovereignty as well as that of Cuba. The Member States also have recognized that such a gross violation of the Charter of the United Nations and of international law cannot go unanswered.

Even before the United States adopted this legislation, the international community had condemned the United States' economic blockade of Cuba. At its fiftieth session last year, a united General Assembly, by a vote of 117 to 3, adopted the resolution entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" (resolution 50/10 of 2 November 1995). The General Assembly found that the extraterritorial reach of the then existing United States measures "affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation".

In the same resolution, the General Assembly found that the "purposes and principles enshrined in the Charter" were at stake, particularly the fundamental principles of the "sovereign equality of States, non-intervention and non-interference in their internal affairs". The General Assembly also saw at risk "freedom of international trade and navigation, which are also enshrined in many international legal instruments". Accordingly, the General Assembly solemnly called upon the United States to withdraw its extraterritorial measures, and to refrain from promulgating still other measures of like kind.

This was the fourth such resolution adopted by the General Assembly: resolutions 47/19 of 24 November 1992; 48/16 of 3 November 1993 and 49/9 of 26 October 1994. Reflecting a broad consensus from the outset, these resolutions drew ever greater support, amounting finally to virtual unanimity, as it became increasingly clear that the United States had no intention whatsoever of abiding by international law. Even those few States that continued to abstain voiced their condemnation of the United States measures in the General Assembly proceedings.

A mere four months after the General Assembly adopted resolution 50/10, the United States showed its utter disregard of international opinion by enacting legislation which, in the extremity of its extraterritorial reach and the nakedness of its imperial intentions, makes the already condemned United States measures pale in comparison. Indeed, so extreme and unprecedented is this legislation that the United States' own Department of State conceded that it could not be defended under international law and opposed its adoption until the United States Executive cynically abandoned legal principle for political gain.

See, for example, U.S. Department of State, "Legal considerations regarding title III of the Libertad Bill", reprinted in 141 Congressional Record S15106-S15108 (12 October 1995).

I. THE LEGISLATION'S PRINCIPAL FEATURES

Although the legislation, known after its Congressional sponsors as "Helms-Burton", already has gained a well-deserved notoriety, it is appropriate to review its principal features here. Upon each reading, the legislation newly astounds.

A. Liability of third-country nationals for transactions involving Cuban property

Title III decrees that third-country nationals are liable to the former owners of nationalized Cuban property or their successors in interest if they "traffic" in such property. Third-country nationals are obligated to pay three times the full value of the nationalized property if, more than three decades after the nationalizations, they acquire any legal interest in the nationalized property, manage or occupy the property or engage in a commercial transaction using or otherwise benefiting from the nationalized property.

The courts of the United States are given the exclusive jurisdiction to issue legal judgements affixing this liability. The former owner then may seize any property of the third-country national it may find within the United States in satisfaction of the judgement.

As the United States' own Department of State concedes, Title III represents "an unprecedented extraterritorial application of United States law" and is "very difficult to defend under international law" (141 Congressional Record S15106 (12 October 1995)). Why this is so is readily apparent:

(a) The United States is applying its own law to determine the legal ownership and use of property that is not and never has been within its own territory. Rather, the nationalized property, almost entirely consisting of real and immovable property, was in Cuba when nationalized and thereafter; in some instances, the property also may have come within the territory of third countries;

(b) The United States is applying its own law even though all the activities of third-country (and Cuban) nationals it condemns and penalizes take place entirely in Cuba or in third countries, without any connection to the territory of the United States;

(c) The United States is applying its own law even though the vast majority of persons with claims under this legislation were not United States nationals at the time of the nationalizations and, moreover, were nationals of Cuba;

(d) The United States is not even purporting to apply international law. Under Helms-Burton, it simply does not matter whether or not the nationalizations, or the subsequent dealings of third-country nationals with respect to the nationalized property, sustain scrutiny under international law. The courts of the United States are not even permitted to consider that question;

(e) Title III retroactively voids legal title to property and defeats the settled expectations of third-country nationals that they could deal in such property with security, expectations whose legitimacy was expressly recognized by the United States' own courts, which upheld the title acquired by Cuba and transferred to others. b/

B. Exclusion of third-country nationals from the United States

Title IV supplements Title III by imposing additional sanctions upon third-country nationals for "trafficking": it excludes from the United States the officers, controlling shareholders and agents of third-country companies that "traffic" in nationalized Cuban property, and excludes as well their spouses and minor children. Title IV is subject to the same international law objections as Title III, and, in addition, violates numerous multilateral and bilateral treaties of the United States, which guarantee the right of treaty nationals to enter the United States for business purposes. c/

C. Continuation of these and other extraterritorial measures against third countries until Cuba relinquishes sovereignty over property relations and its economic and political systems

Under Helms-Burton, Title III and Title IV must remain in effect until Cuba has transformed utterly its property relations, its economic system and its political system, all to the comprehensive prescriptions of the Helms-Burton legislation. d/ The same is true with the United States economic measures previously condemned by the General Assembly, all of which Helms-Burton "codifies" into statutory law (sect. 102 (h)). Likewise, the United States Executive's authority to "suspend" the commencement of new Title III lawsuits is linked not to the question of compensation at all but only to progress in achieving what is euphemistically called a "transition to democracy" (sect. 306 (c)).

Perhaps more than anything else, it is this openly proclaimed objective of abrogating Cuba's sovereignty and the effort to coerce international cooperation in that illegitimate undertaking that characterizes Helms-Burton.

For Title III, Title IV and the other restrictions of the United States blockade to end, Helms-Burton requires each of the following demands be met:

(a) That Cuba has returned, or has made demonstrable progress in returning, nationalized properties to their former Cuban owners, as well as its returning nationalized properties to their former United States owners

(sect. 206 (6)). According to Helms-Burton, there are "millions" of Cuban nationals entitled to the return of nationalized property, and "thousands" of United States nationals (sect. 301 (3)). The statutory alternative of providing compensation is illusory, as Cuba is not financially capable of buying back its own land, productive facilities and residential housing;

(b) That Cuba has adopted, or is substantially moving towards, "a market-oriented economic system based on the right to own and enjoy property" (sect. 206 (3));

(c) That the Cuban Government "does not include Fidel Castro or Raul Castro" (sect. 205 (a) (7));

(d) That Cuba has adopted a multi-party electoral system (sect. 205 (a) (4) (B), 206 (1));

(e) That Cuba has ceased any interference with Radio Martí or Television Martí broadcasts (sect. 205 (a) (5)). (These United States Government broadcasts into Cuban territory without permission violate, inter alia, the treaties governing international telecommunications); e/ and

(f) That Cuba, in the unilateral judgement of the United States, is "respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights" and is "showing respect for the basic civil liberties and human rights of the citizens of Cuba" (sect. 205 (a) (6) (B), 206 (2)).

It bears emphasis that the United States' demands are by no means limited to so-called "human rights" issues, illegitimate as would have been the imposition of the United States blockade even had its stated rationale been so limited.

D. The character of Titles III and IV as a broad secondary boycott of Cuba

As is well known, the Cuban Revolution which triumphed in 1959 produced a profound transformation in property relations and in the economy of Cuban society. The pre-Revolution concentration of wealth and ownership of productive facilities and land was extreme, as was the resulting inequality and poverty of the vast majority of the Cuban people. The Cuban people made the sovereign decision to nationalize in the public interest much of the country's productive facilities and land.

Given that, over the course of 37 years, the Cuban Revolution has built many new productive facilities and has brought into production vast tracts of previously unused land, much of the third-country investments and comparable commercial activities in Cuba are beyond the reach of even Helms-Burton's provisions. Nonetheless, owing to the extent of the nationalizations in the first years of the Revolution, Helms-Burton may well expose to suits in United States courts many third-country companies.

"Trafficking" under Helms-Burton is thus coextensive to some substantial extent with investing in Cuba and pursuing comparable commercial activities there. Moreover, it may well be prohibitive for a company with sufficient business contacts in the United States to be amenable to suit there. Helms-Burton imposes liability in triple the amount of the full value of the property involved, a measure of damages meant to be coercive and punitive, not compensatory.

The intended result is a broad secondary boycott: to force third-country companies to choose between investing in Cuba, on the one hand, and maintaining commercial relations with the United States, on the other. It is a broad secondary boycott, moreover, pursued for wholly illegitimate objectives.

Through the coercion of this broad secondary boycott, the United States hopes to impose the international blockade of Cuba that it has so completely failed to achieve otherwise. Cuba today enjoys normal commercial as well as diplomatic relations with virtually the entire world. No State member of the United Nations maintains an embargo against Cuba except the United States. Neither the United Nations nor any other international body authorizes, let alone mandates, economic sanctions against Cuba. More than 20 years ago, the Organization of American States (OAS) withdrew its sanctions against Cuba, adopted under United States pressure in 1964, and today condemns the unilateral application of economic sanctions in general, and the Helms-Burton legislation in particular, as violative of the OAS Charter.

E. Direct sanctions against third-party States

Not content to target their nationals, Helms-Burton directly threatens third-party States as well for exercising their sovereignty prerogative to maintain economic relations with Cuba. The catalogue of sanctions enacted in Title I of the legislation is too long and elaborate to repeat here. It suffices to note that in Title I, Helms-Burton strengthens and expands the very types of measures already condemned by the General Assembly and Member States, including those found in the Cuban Democracy Act of 1992.

F. Sanctions against international organizations

Helms-Burton mandates breach of the United States' obligations to international financial institutions in the event they, upon the decision of their duly constituted governing councils, decide to extend loans or assistance to Cuba (sect. 104 (b)).

II. HELMS-BURTON AND INTERNATIONAL LAW

With the legislation's essential features thus in focus, it is evident that Helms-Burton's violations of the Charter of the United Nations and of international law are many and are fundamental. They have been universally recognized and condemned as such by Member States. Even the United States has recognized in the past that international law prohibits measures such as this,

and the United States Department of State conceded that this very legislation is indefensible.

A full survey of this legislation's violations of international law is not possible in a document meant for general distribution such as this, the violations being so numerous as well as egregious. We therefore confine ourselves to the following points:

1. With respect to the United States' imposition of liability for "trafficking" and the related exclusion of corporate officials from the United States, Helms-Burton's violation of universally accepted international law principles was succinctly stated by a Member State which traditionally has shared the United States', not Cuba's, views on the legality of nationalizations under international law:

> "[T]he imposition of such measures on those who are not parties to the original claims dispute is inconsistent with the principles of international law which recognize the right of sovereign States to determine matters such as the ownership of property pursuant to the law of their own territory. Accordingly, where such States grant clear title to a subsequent purchaser, that purchaser should not be subject to any punitive measures imposed by a third country. Resolution of the claims should be limited to those who were parties to the original dispute."

The State Department's own concession of Title III's illegality is particularly damning, as the United States long has asserted an extraterritorial reach for its laws far beyond what other States have accepted as consistent with international law. Even so, the State Department could not but concede that Helms-Burton goes well beyond the outer limits of what is arguably permissible. Helms-Burton, in the State Department's judgement as well as that of the international community, exceeds the United States' national jurisdiction and abrogates an "essential attribute of sovereignty" reserved to other States.

The State Department's analysis, presented to the United States Congress in opposition to Title III, merits study for how thoroughly it condemns what the United States has since hopelessly sought to defend. We quote the State Department's analysis at some length in the endnotes here. g/

2. Helms-Burton violates still other fundamental principles of international law by legislating with respect to the nationalization of Cuban-owned property as well as United States-owned property. Under Title III, persons who were Cuban nationals at the time of the nationalization of their property may bring a "trafficking" lawsuit provided only that they subsequently became United States nationals. Title IV's sanctions apply to "trafficking" in Cuban-owned property. Helms-Burton demands the return of the nationalized Cuban-owned property, as well as United States-owned property, before the United States economic blockade is lifted.

Indeed, Helms-Burton's main concern is precisely with the Cuban nationals who left their country and now reside in the United States, particularly South Florida. According to Helms-Burton, there are "millions" of former Cuban nationals who suffered nationalization losses as compared to "thousands" of

United States nationals. And the major United States corporations with nationalization claims actively opposed adoption of Title III and Title IV as contrary to their interests. See, e.g., the statement of the Joint Corporate Committee (14 June 1995), reprinted in 141 Congressional Record S15111-12 (12 October 1995).

Yet it is a universally accepted principle of international law that a State may not seek redress for injuries suffered by those who were not nationals of that State at the time of the injury. h/ Moreover, while there is dispute as to whether international law imposes limitations on a State's nationalization of foreign-owned property, it is universally accepted that a State acts entirely within its own sovereign capacity in nationalizing the property of its own nationals located within its territory, and that no question of international law is even presented. i/

In this respect as well, the United States' arrogance is underscored by the fact that it has acted directly contrary to its own explicit understanding of international law. For two centuries, the United States has reiterated time and again that "under well-established principles of international law, to which the United States adheres, the United States cannot espouse claims against foreign Governments for injuries inflicted upon persons who were not United States citizens at the time of the injury" (United States Department of State, Statement (1981), reprinted in S. Rep. No. 97-211, 97th Cong. 1st Sess. 5 (1981)). j/ Likewise, the courts of the United States uniformly have held that international law commands respect for a sovereign's taking of the property of its own nationals located within its territory. k/ Indeed, the courts of the United States so held with respect to the very nationalization of Cuban-owned property which Helms-Burton now makes the subject of "trafficking" lawsuits and related sanctions. l/

3. Helms-Burton represents the most blatant and extreme attempt yet by the United States to compel third-country participation in an economic blockade pursued for patently unlawful purposes: coercing Cuba into restoring the pre-Revolution Cuban elite now principally resident in the United States to its former property and position in Cuba and, in this and every other respect, transforming Cuba's property, economic and political systems to the liking and advantage of the United States.

The legislation is clear and unabashed in its declaration of these objectives. Moreover, as noted, Helms-Burton legally binds the United States to continue both its newly crafted sanctions as well as all its previous ones until the goal of transforming Cuba to its prescriptions has been achieved. Not since the beginning of this century, when it occupied Cuba militarily and imposed the infamous Platt Amendment on the Cuban Constitution, permitting renewed occupation at will, has the United States so openly and so completely sought to reduce Cuba to a colonial status. Not since the end of the colonial era has any State so brazenly proclaimed its imperial intentions.

This criminal enterprise is at war with the bedrock principles of the Charter and of international law: the sovereign equality of States, non-intervention and non-interference in internal affairs. As authoritatively stated in the Declaration on Principles of International Law concerning Friendly

Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted in 1970 by the General Assembly without dissent (resolution 2625 (XXV)), it is a necessary corollary of these fundamental principles of the Charter that:

> "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.
>
> "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind ..."

The same clear prohibition, which emanates from the Charter of the United Nations and is universally acknowledged to have obtained the status of binding international law, has been repeated and reaffirmed in numerous other resolutions of the General Assembly m/ and in other international instruments such as, for example, the Vienna Convention on the Law of Treaties, the General Agreement on Tariffs and Trade (GATT), and the Charter of the Organization of American States.

It cannot be doubted that, given its intensity and comprehensive scope, the economic blockade established by Helms-Burton and the rest of the United States sanctions it codifies amounts to economic coercion. Nor can it be doubted from Helms-Burton's explicit declarations and legal provisions that the purpose of the United States' unparalleled economic coercion against Cuba is the "subordination of the exercise of its sovereign rights and to secure from it advantages".

4. As its own principal trading partners have stressed, n/ Helms-Burton is also in flagrant disregard of the principles of free trade and commerce enshrined in numerous international instruments. These principles, reaffirmed many times by the General Assembly, are set forth definitively in the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)), which provides in the relevant part:

Article 4

> "Every State has the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences ..."

This provision, like others in the Charter of Economic Rights and Duties of States, applies in the field of international economic relations the fundamental principles of sovereign equality of States, non-intervention and the duty to cooperate, which are fundamental to the Charter and international law. It is noteworthy that, while some Member States may have expressed reservations with

respect to this or other provisions of the Charter of Economic Rights and Duties of States on a variety of grounds, they have nonetheless expressed through the European Community's statements and elsewhere their objection to the Helms-Burton legislation, so extreme and unjustified is its interference with their sovereign decision to maintain normal economic and commercial relations with Cuba.

Moreover, the United States measures patently violate the rights both of third countries and of Cuba to free trade guaranteed by the General Agreement on Tariffs and Trade and other World Trade Organization (WTO) obligations as well as numerous regional and bilateral commercial treaties to which the United States is party. Indeed, by the secondary boycott sought by Titles III and IV, Helms-Burton, in violation of GATT, imposes impermissible restrictions upon the importation into the United States of goods from third countries; article XI of GATT 1947, as incorporated into GATT 1994, expressly forbids any "prohibitions or restrictions other than duties, taxes, or other charges" upon the importation of products of another contracting State.

It cannot be seriously maintained that the "national security" exception found in GATT and other applicable multilateral and bilateral treaties excuses the United States from its treaty obligations. Article XXI (b) (iii) of GATT 1947, as incorporated into GATT 1994, relieves a party of its obligations only to the extent necessary for the "protection of its essential security interests ... in time of war or other emergency in international relations". There can be no credible claim that Cuba poses a threat to the security of the United States, and the only emergency in international relations is that posed by the United States' efforts to intervene in Cuba's internal affairs and to deny the rights of third countries to determine their own relations with Cuba.

III. CONCLUSION

The Helms-Burton legislation violates the most fundamental principles of the Charter of the United Nations and of international law, both in imposing new and unprecedented sanctions and in mandating continuation of those and the other extraterritorial measures of the United States blockade until Cuba surrenders its sovereignty. The legislation merits the most serious concern of the General Assembly.

Notes

a/ P.L. No. 104-114 (12 March 1995).

b/ The United States courts recognized the legitimacy of Cuba's title acquired by the nationalization of property owned by Cuban nationals and, indeed, upheld Cuba's title against the claims of former owners. See, e.g., F. Palicio y Compania, S.A. v. Brush, 256 F. Supp. 481, 487 (S.D.N.Y. 1966), aff'g and adopting dist. ct. op., 375 F.2d 1011 (2d Cir.), cert. denied, 389 U.S. 830 (1967). With respect to the nationalization of property owned by United States nationals, the United States Supreme Court recognized the validity of the title acquired by Cuba in Banco Nacional de Cuba

v. Sabbatino, 376 U.S. (1964). The Congress of the United States modified that rule of law only with respect to United States-owned property brought within the territory of the United States. P.L. 89-171, § 301 (d) (2); 79 Stat. 653 (1965); 22 U.S.C. § 2370 (e)(2); for the authoritative judicial construction of this legislation, see Banco Nacional de Cuba v. First National City Bank of N.Y., 431 F.2d 394 (2d Cir. 1970), rev'd on other grounds, 40 U.S. 759 (1972).

c/ As the European Community has correctly asserted, the right to enter the United States for business purposes is guaranteed, inter alia, by the General Agreement on Tariffs and Trade of 1994 and the General Agreement on Trade In Services and the Annex On Movement Of Natural Persons Supplying Services Under The Agreement thereto. Comparable guarantees also were solemnly made by the United States in more than 60 bilateral treaties regulating commerce and friendly relations.

d/ See sect. 302 (h) (right to bring Title III lawsuits terminates only when a "democratically elected government in Cuba is in power"); sect. 206 (setting out property, economic and political requirements for recognizing a "democratically elected government" to be in power); and sect. 102 (h) (codifying and continuing in effect all existing restrictions of the United States blockade against Cuba until a "democratically elected Government" as defined in section 206 is in power in Cuba).

e/ The Radio Regulations of the International Telecommunication Union, done at Geneva, 6 December 1979, and the International Telecommunication Convention, done at Nairobi, 6 November 1982. See the ruling of the International Trade Union's International Frequency Registration Board, April 1990.

f/ See the OAS resolution on free trade and investment in the hemisphere, 4 June 1996, adopted with the only opposing vote of the United States. See also, e.g., the statements of the Heads of State or Government at the Ibero-American summits concerning the need to eliminate the unilateral application of economic and trade measures by one State against another which affect the flow of international trade; and decision 360 adopted on 3 July 1995 by the Twenty-first Council of the Latin American Economic System (SELA), held at the ministerial level at San Salvador, which urged that the economic, commercial and financial embargo against Cuba be lifted.

g/ While reaffirming the United States' position that Cuba's nationalization of United States-owned property (but not Cuban-owned property) 36 years ago violated international law, the State Department stated that it:

> "opposes the creation of a civil remedy of the type included in Title III ... The LIBERTAD bill would be very difficult to defend under international law ...
>
> "The civil remedy created by the LIBERTAD bill would represent an unprecedented extraterritorial application of United States law ... Under international law and established State practice, there are widely accepted limits on the jurisdictional authority of a state to prescribe, i.e,, to

make its law applicable to the conduct of persons, as well as to the interests of persons in things ...

"Asserting jurisdiction over property located in a foreign country and expropriated in violation of international law would not readily meet the international law requirement of prescription because it is difficult to imagine how subsequent trafficking in such property has a 'substantial effect' within the territory of the United States ... The actual effects of an illegal expropriation of property are experienced at the time of the taking itself, not at any subsequent point ...

"As a general rule, even when conduct has a 'substantial effect' in the territory of a state, international law also requires a State to apply its laws to extraterritorial conduct only when doing so would be reasonable in view of certain customary factors. Very serious questions would arise in defending the reasonableness under international law of many lawsuits permitted by Title III of the LIBERTAD bill. The customary factors for judging the reasonableness of extraterritorial assertions of jurisdiction measure primarily connections between the regulating state, on the one hand, and conduct being regulated, on the other. Title III would cover acts of foreign entities and non-United States nationals abroad involving real or immovable property located in another country with no direct connection to the United States other than the nationality of the person who holds an expropriation claim to that property. Moreover, the actual conduct for which liability is created - private transactions involving the property - violates no established principle of international law. Another customary measure of reasonableness is the extent to which the exercise of jurisdiction fits with international practice. The principles behind Title III are not consistent with the traditions of the international system and other states have not adopted similar laws.

"International law also requires a State asserting the reasonableness of an exercise of prescriptive jurisdiction to balance its interest against those of other states, and refrain from asserting jurisdiction when the interests of other states are greater. It would be very problematic to argue that United States interests outweigh those of the state in which the property is located be it Cuba or elsewhere. International law recognizes as compelling a state's interests in regulating property present within its own borders. The United States guards jealously this right as an essential attribute of sovereignty. In contrast, discouraging transactions relating to formerly expropriated property has little basis in State practice."

U.S. Department of State, "Legal considerations regarding Title III of the LIBERTAD bill," reprinted in 141 Congressional Record S15106-08 (12 October 1995) (emphasis added).

h/ See, for example, Ian Brownlie, Principles of public international law, pp. 480-481 (4th ed., 1990); I Oppenheim's International Law 347-348 (H. Lauterpacht ed.) (8th ed., 1955); Werner Levi, Contemporary international law, pp. 227-228, 1991).

i/ See, e.g., 2 D. P. O'Connell, International law 1128 (1965); Richard N. Swift, International law 324 (1969); Case of Lithgow and others, 102 Eur. Ct. H.R. ¶¶ 113-16 (ser. A) (1986).

j/ See also, e.g., Department of State File No. P75 0028-2000, reprinted in Department of State, Digest of United States Practice in International Law 484-485 (1975); MS. Department of State, file 262.1141 Breger, Marcus/12-861, reprinted in 8 Whiteman, Digest of international law 1233 (1967); Memorandum, "The matter of nationality with respect to international claims", 9 February 1959, printed in The International Claims Settlement Act, Hearing before a Subcommittee of the Committee on Foreign Relations, United States Senate, 86th Cong., 1st Sess. 58, 67 (1959), and reprinted in 8 Whiteman, Digest of international law 1233, 1241 (1967); 230 MS. Dom. Let. 378, reprinted in VI John Bassett Moore, A digest of international law 631 (1906) (explaining that United States would not espouse the claims of naturalized Cubans for property destroyed by the Spanish Government in Cuba); 102 MS. Dom. Let. 43 (8 April 1874), reprinted in VI John Bassett Moore, A Digest of International Law 637 (1906) explaining why United States will not espouse claim of naturalized Cuban); 160 MS. Dom. Let. 75 (30 April 1886), reprinted in VI John Bassett Moore, A Digest of International Law 637 (1906) ("Subsequent naturalization does not alter the international status of a claim which accrued before naturalization.").

The United States Foreign Claims Settlement Commission likewise consistently has recognized that:

> "Under well-established principles of international law, in order for a claim to be compensable, the property upon which the claim is based must have been owned by a national or nationals of the United States at the time of loss and the claim which arose from such loss must have been owned by a national or nationals of the United States continuously thereafter."

In the Matter of the Claim of Arthur Dobozy, Claim No. HUNG-21,300, Proposed Decision No. HUNG 1257, 16 July 1958, reprinted in 8 Whiteman, Digest of international law 1246 (1967); see also, e.g., Claim No. IT 10, 252, Decision No. IT-62, reprinted in 8 Department of State, Digest of International law 1236 (1967).

k/ See, e.g., Chudian v. Philippine National Bank, 912 F.2d 1095, 1105 (9th Cir. 1990); De Sanchez v. Banco Central de Nicaragua, 770 F.2d 1385, 1396-98 (5th Cir. 1985); Dreyfus v. Von Finck, 534 F.2d 24, 30-31 (2d Cir. 1985), cert. denied, 429 U.S. 835 (1976); Tejarat v. Varsho-Saz, 723 F. Supp. 516, 520 (C.D. Calif. 1989). See also American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States, § 702, comment k.

l/ See, e.g., F. Palicio y Compania S.A. v. Brush, 256 F. Supp. 481, 487 (S.D.N.Y. 1966), aff'g and adopting dist. ct. op., 375 F.2d 1101 (2d Cir.), cert. denied, 389 U.S. 380 (1967); Maltina Corp. v. Cawy Bottling Co., 462 F.2d 1021, 1024-25 (5th Cir. 1972).

m/ See, e.g., "Economic measures as a means of political and economic coercion against developing countries", General Assembly resolution 38/197 (20 December 1983); General Assembly resolution 39/210 (18 December 1984); General Assembly resolution 40/185 (17 December 1985); General Assembly resolution 41/165 (5 December 1986); General Assembly resolution 42/173 (11 December 1987); General Assembly resolution 44/125 (22 December 1989); General Assembly resolution 46/210 (20 December 1991); General Assembly resolution 48/168 (21 December 1993); "Charter of Economic Rights and Duties of States", General Assembly resolution 3281 (XXIX) (9 April-2 May 1974); "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty", General Assembly resolution 2131 (XX) (21 December 1965).

Recently, a group of experts convened by the Secretary-General reviewed current developments and found that the prohibition against the use of economic coercion retained its full force in circumstances such as presented here:

> "While not disputing the general rule [against the use of economic coercion], some participants expressed the view that the application of coercive economic measures cannot be completely excluded in a realistic consideration of international relations. Exceptions, according to this view, include the use of coercive economic measures as part of an enforcement mechanism incorporated into internationally agreed instruments and regimes. Under such circumstances, coercive economic measures can be legitimately applied in the case of clear violations of internationally agreed norms. Such judgements, however, should be made on a multilateral and not a unilateral basis. The meeting noted that despite the above-mentioned principles, there have been recent attempts to justify unilateral coercive measures for explicitly interventionist purposes (to bring about changes in a sovereign State's economic and political system). The meeting viewed this development with concern and wished to bring it to the attention of the international community."

Report of the Secretary-General on economic measures as a means of political and economic coercion against developing countries: summary of the deliberations of the expert group meeting (A/50/439, 18 September 1995, para. 47).

See, e.g., the European Commission's aide-mémoire of 12 July 1996 to the United States of America, reprinted in The Reuters (12 July 1996); and The Request for Consultations Presented by the European Communities to the World Trade Organization, 13 May 1996.